

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.	Rulemaking 93-04-003
Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.	Investigation 93-04-002
Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	Rulemaking 95-04-043
Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.	Investigation 95-04-044

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING PUBLIC UTILITIES CODE SECTION 709.2 HEARINGS**

Over the past several months, a number of parties have urged the Commission to hold evidentiary hearings on the Public Utilities Code Section 709.2 issues in the above-captioned proceeding. In an effort to address the requests and expeditiously schedule any potential hearings, the Telecommunications Division Staff and I have polled interested parties who submitted Section 709.2 comments in August. We asked those parties to indicate the number of issues that they proposed for evidentiary hearing, and what Pacific witnesses they would call. We targeted approximately four days in

November for such hearings. The majority of parties contacted indicated that they would participate in whatever type of hearings the Commission conducted with respect to Section 709.2. Pacific Bell stated that they would participate in any hearings held; however, they maintain that the record is currently complete and hearings are unnecessary.

On November 2, 2001, Pac-West Telecomm, Inc. (Pac-West) and Working Assets Funding Service, Inc., d/b/a Working Assets Long Distance (Working Assets) submitted a letter responding to my inquiry. Pac-West and Working Assets stated that in light of the timing constraints¹ that I outlined for an evidentiary hearing, they proposed that I entertain oral arguments to allow the parties “to present their positions with respect to whether or not Pacific Bell has met its burden of proof as required by Section 709.2 (c), based on the record evidence in this proceeding.” Pac-West and Working Assets Letter at 1. They further offered a set of procedures to facilitate fairness to all parties during the course of the hearings.

I have discussed Pac-West’s and Working Assets’ proposal with the Assigned Commissioner, and we have decided to convene hearings so that Pacific Bell and the interested parties that submitted comments on the Section 709.2 (c) issues may present oral arguments highlighting the central points of their written presentations. We will not entertain any new evidence on the Section 709.2 issues during these hearings. Consequently, we will not hear from any party who did not submit comments on the issues on August 23, 2001.

¹ Pac-West and Working Assets note in their letter that they maintain their legal position with respect to the requirement of evidentiary hearings pursuant to Section 709.2.

In addition, I urge each participant to restrain from creating and attempting to introduce any new charts, graphs or documents to illustrate your position.

I am scheduling three days for these hearings with the fervent hope that we will not need the full time. Those presentations that are succinct will be the most effective since the record already contains the complete written submissions. To assist me in preparing as informative a list of presenters as possible, any party who has filed Section 709.2 comments and is interested in arguing one or more issues should send the above-captioned service list and me, by electronic mail (e-mail), a statement outlining the issue or issues that the party will address. The statement should include a time estimate of the presentation. The limited hearing time will not accommodate more than one presenter for a specified issue. Therefore, I strongly encourage interested commenters to coordinate their issues with Pac-West and Working Assets since they have indicated a desire to argue a number of Section 709.2 issues.

For these hearings, Pacific Bell will present the initial argument where it will highlight and summarize the affirmative showing that it set forth in its June 27, and September 13, 2001 filings. Pac-West, Working Assets and the other interested commenters that submitted statements will respond in accordance with their August 23, 2001 submissions. Pacific Bell will then have an opportunity to reply. I will designate the full list and order of presenters, as well as the time allotments after I receive the issue statements. Finally, I will not be setting a briefing schedule after the hearings because with these arguments the record on Section 709.2 will be complete.

Therefore, **IT IS RULED** that:

1. Oral Arguments shall be held in the above-captioned proceeding before the Assigned Commissioner and Assigned Administrative Law Judge on

December 3-5, 2001, from 9:30 a.m. to 4:00 p.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

2. Pacific Bell and any interested parties that submitted comments on the Section 709.2(c) issues may present arguments highlighting the central points of their written presentations.

3. No new evidence on the Section 709.2 issues will be entertained during these hearings.

4. Any party who has filed Section 709.2 comments and is interested in arguing one or more issues should send the service list and me², by e-mail no later than the close of business on November 28, 2001, a statement outlining the issue or issues that the party will address. The statement should include a time estimate of the presentation

Dated November 21, 2001, at San Francisco, California.

/s/ JACQUELINE A. REED

Jacqueline A. Reed
Administrative Law Judge

² jar@cpuc.ca.gov. Copies of the statements should also be sent to Telecommunications Division staff member Aram Shumavon at aram@cpuc.ca.gov.

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Public Utilities Code Section 709.2 Hearings on all parties of record in this proceeding or their attorneys of record.

Dated November 21, 2001, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.